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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/582,802

06/14/2006

Toru Yamada

136170

7018

7590 09/17/2008  
Oliff &Berridge,PLC  
PO Box 320850  
Alexandria,, VA 22320-4850

EXAMINER
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HITESHEW, FELISA CARLA

ART UNIT	PAPER NUMBER
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1792

MAIL DATE	DELIVERY MODE
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09/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,802	<b>Applicant(s)</b> YAMADA, TORU	
	<b>Examiner</b> Felisa C. Hiteshew	<b>Art Unit</b> 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 10-15 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/14/2006</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

The PTOL 1449 of 06/14/2008 has been received, reviewed and considered.

***Specification***

2. The disclosure is objected to because of the following informalities: Please insert the following to reflect the proper continuing data:

--This application a 371 or PCTA/JO04/17193 11/18/2004--.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. Claim 1 recites the limitation "...horizontal direction..." in line 7. There is insufficient antecedent basis for this limitation in the claim. Please insert the word--a-- before the word "horizontal" for proper antecedence.
4. Claim 1 recites the limitation "...main surface..." in line 11. There is insufficient antecedent basis for this limitation in the claim. Please insert the word--an-- before the word "main" for proper antecedence.
5. Claim 1 recites the limitation "...inner space..." in line 13. There is insufficient antecedent basis for this limitation in the claim. Please insert the word--a-- before the word "inner" for proper antecedence.

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6. Claim 1 recites the limitation "...top surface..." in line 18. There is insufficient antecedent basis for this limitation in the claim. Please insert the word--a-- before the word "top" for proper antecedence.

7. Claim 1 recites the limitation "...outer peripheral surface..." in line 21. There is insufficient antecedent basis for this limitation in the claim. Please insert the word--an-- before the word "outer" for proper antecedence.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Japanese Patent Abstract 2000331939.

JP '939 teaches an epitaxial growth device(1), comprising a process chamber (2), a liner part (2a) which forms a part of the side part of the process chamber (2), gas support openings (3a to 3e), and a gas exhaust opening (4). A susceptor (7) for supporting wafer W is provided in the process chamber (2), and a pre-heating ring (9) is provided between the liner part (2a) and the susceptor (7). At the upper part of the pre-heating ring (9) are guide plates (11a to 11f) extending on a placement part (7a) a side of the susceptor (7) form the tip of the plurality of side walls (10) which form the gas supply openings (3a to 3e) in a horizontal direction. The guide plates (11a to 11f) rectify

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each reactive gas guided into the process chamber (2) and guide it to a specified region on the surface of wafer W placed on the placement part (7a).

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/582,860. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications teach a similar vapor phase growth apparatus.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

12. Claims 5 and 10-15 are allowed.
13. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).
14. Claims 7 to 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Felisa Hiteshew whose telephone number is (571) 272-1463. The examiner can normally be reached on Mondays through Thursday from 5:30 AM to 4:00 PM with Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Mikhail Kornakov, can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-1463.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system. see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private

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PAIR system, contact the Electronic Business Center (EBC) at 866- 217-9197  
(toll-free).

/Felisa C. Hiteshew/  
Primary Examiner, Art Unit 1792